



The Concept and Structure of Russian Ecological Legislation

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Abstract: The article deals with the concept and structure of the ecological legislation in the Russian Federation. The author estimates the value of the existing research on these issues to ensure balanced and harmonic development of regulation of ecological relations. He determines the object of these relations: nature (environment) and its individual components: natural objects and complexes. The subject of ecological legislation, i.e., the totality of public relations concerning the environment (nature), which are regulated in the law, is given consideration. Depending on the object the author mentions two approaches to the development of ecological legislation: integrated and differentiated. In the context of the federal structure of the Russian Federation he explores rules of development of ecological legislation at the Federal and regional levels.

Keywords: environment; nature; natural objects and complexes; the concept of ecological legislation; structure of ecological legislation; the object of ecological relations; the subject of ecological legislation.

1. Introduction

The study of this topic provides an opportunity to shed light on a number of substantive issues, starting with concepts. In relation to the environment the world legal practice, including Norway's, mainly operates with the term “environmental.” The key term used in Russia is “ecological.” In Western environmental law the object of regulation – environment – is set as the basis of the title of this branch of law.





In Russia a combination of existing links and relations concerning nature, used in ecology, and requiring legal regulation, form the basis for this law. Accordingly, in the West the label environmental law is used, whereas in Russia it is called ecological law. Both approaches are methodologically justified.

In Russian law the concept of “environment” is also widely used as an object of protection. The legal content of the “environment” and “nature” are synonymous. Issues researched in the article are relevant to the Arctic. The exploration, in particular, of a notion of ecological legislation and its subject, of objects of public ecological relations, structure of ecological legislation is important methodologically to determine adequately further the environmental component of the legal regime of the Arctic.

2. The Value of Study of the Concept of “Ecological Legislation”

A number of theoretical and practical issues are raised in connection with the concept of environmental legislation. Its study is connected primarily with the challenge of ensuring balance and harmony of the development of normative legal regulation of environmental relations.

Although ecological law as a branch of law has existed in the Russian legal system for many years, debates on the theme of this article are still going on.¹

1. See: Krasnov N.I., “The natural environmental law in the USSR,” *Jurisprudence* Vol. 4, 1990, pp. 25–34, at p. 32. (Krasnov N.I., *Pravo okruzhayutshei prirodnoi sredy v SSSR*. // *Pravovedenie*. 1990. № 4. 25–34, 32); Bogolyubov S.A., Pankratov I.F., “Concept of the development of ecological legislation,” *Concept of the development of the Russian legislation*. Moscow: Institut zakonodatelstva i sravnitel'nogo pravovedeniya, 1998, p. 191. (Bogolyubov S.A., Pankratov I.F., *Kontseptsiya razvitiya ekologicheskogo zakonodatelstva* // *Kontseptsiya razvitiya rossiyskogo zakonodatelstva*. Moskva: Institut zakonodatelstva i sravnitel'nogo pravovedeniya, 1998, 191); Pankratov I.F., “Notion of ecological legislation and its system,” *Problems of improving ecological legislation and its effective implementation*. Moscow: Institut zakonodatelstva i sravnitel'nogo pravovedeniya, 1993, p. 16. (Pankratov I.F., *Ponyatie ekologicheskogo zakonodatelstva i ego sistema* // *Problemy sovershenstvovaniya ekologicheskogo zakonodatelstva i effektivnost ego realizatsii*. Moskva: Institut zakonodatelstva i sravnitel'nogo pravovedeniya, 1993, 16); Brinchuk M.M., “Theoretical problems of legislation on the environment,” *State and law* Vol. 12, 1998, pp. 73–81. (Brinchuk M.M., *Teoreticheskie problemy zakonodatelstva ob okruzhayutshei srede* // *Gosudarstvo i pravo*. 1998. № 12, 73–81); Brinchuk M.M., *Concept of the Development of Ecological Legislation of the Russian Federation* (Kontseptsiya razvitiya ekologicheskogo zakonodatelstva Rossiyskoi Federatsii). St. Petersburg: Izdatelstvo Yuridicheskogo Instituta, 2009, pp. 9–15; Golichenkov A.K., “Basic approaches to developing the concept of the RF Ecological code project,” *Law and policy*, Vol.10, 2000, pp. 125–134, at p. 126. (Golichenkov A.K., *Osnovnye podkhody k razrabotke kontseptsii Ekologicheskogo kodeksa RF* // *Pravo i Politika*. 2000. № 10, 125–134, 126).





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The term “ecological legislation” is not a legal term, it is not fixed normatively. For example, the Constitution of the Russian Federation (Art. 72) refers to land, water, forestry legislation, legislation on subsoil, and on environmental protection. In practice, the term is widely used in the science of ecological law, in the teaching of this law as a discipline at law schools in Russia, and in the sphere of law execution. Both a structure of normative acts and the content of ecological legislation depend on the content of legal regulation. As for the concept and structure of ecological law there are disputes in Russian legal doctrine regarding both an object of regulated relations and a subject matter.²

3. Object of Relations Regulated in Ecological Legislation

The object of social relations regulated by ecological law, known in the legal doctrine as ecological relations, is nature (environment) and its individual components – natural objects (land, water, subsoil, etc.), nature-related complexes (for example specially protected territories) and their inter-relationship. Land, mining, water, forest, and fauna legislation united under the notion “natural resources legislation” exist as independent legal spheres. Are they a part of ecological legislation?

There is a position expressed in discussions with experts on natural resources legislation that land and mining legislation are not a part of ecological legislation, but that they exist as separate spheres, independent from ecological legislation.³

In nature, as we know, everything is interconnected and inter-independent. The logic of the ecological legislation structure is seen as the obvious one in the following way; in the extent that land and other natural objects are an integral part of nature (environment) as an object of environmental relations, in the same extent land and other spheres of natural resources legislation are an integral part of the ecological legislation.

2. Scientific positions on the concept and structure of ecological law as well as on the legal content of the various objects of ecological relations are analyzed in the works of: Golichenkov, *supra* note 1; Krassov O.I., *Natural Resources of Russia. Commentaries to Legislation*. Moscow: Delo, 2002 (Krassov O.I., *Prirodnye resursy Rossii. Kommentarii zakonodatelstva*. Moskva: Izdatelstvo Delo, 2002); Brinchuk M.M., *Ecological Law: Objects of Ecological Relations*. Moscow: Institute of State and Law, 2011 (Brinchuk M.M., *Ekologicheskoe pravo: obekty ekologicheskikh otnosheniy*. Moskva: Institut Gosudarstva i Prava, 2011).
3. With regard to the structure of ecological law the author has participated in the discussion of this issue at scientific conferences, where some scientists orally expressed their judgments, for example, that land and mining law are separate, self-sustaining branches of law, recognized as such in the Russian legal science.





THE CONCEPT AND STRUCTURE OF RUSSIAN ECOLOGICAL LEGISLATION

Besides nature (environment) and separate natural objects – land, water, subsoil, forests, etc., modern Russian ecological legislation regulates social relations over many other natural formations, systems identified in legislation as independent ones. These include, for example, natural ecological systems, specially protected natural areas, and ecological disaster areas. The Arctic zone of Russia has recently been emphasized as one of such objects.⁴

Appearance of new objects in law is an objective process.⁵ In the state territory there are unique natural landscapes and complexes. In legislation they are nominated as national parks and natural reserves, i.e., special nature-protected areas. Sometimes selection of such objects is associated with the actions of people. For example, as a result of the accident at the Chernobyl nuclear power plant in 1986 the radioactive contamination of the territory took place. There was a need for legislative fixation of an ecological disaster area. Applying to the Chernobyl ecological disaster area this need is materialized by adoption of the Law of the Russian Federation of June 18, 1992 № 3061-1 amending and supplementing the Law of the RSFSR “On social protection of citizens exposed to radiation as a result of the catastrophe at the Chernobyl NPS.”⁶

Natural and social bases for nomination of new objects in ecological legislation are different. Expansion of the system of such objects is an objective process and an important feature of ecological legislation’s progressive development.

Through science-based selection of individual objects, creating specific legal regimes governing the use and protection of nature and society, the State provides maintenance, conservation, restoration of a favourable state of nature (the environment), and preservation of unique properties and qualities of a unique object in the universe – the Earth.

4. The Subject of Ecological Legislation

In the context of the notion of ecological legislation there are continued disputes regarding the subject of regulated relations. In the Russian legal doctrine under

4. See: Decree of the President of RF of September 18, 2008 № Pr-1969 “Basis of the state policy of the Russian Federation in Arctic for the period up to 2020 and further perspective” // *Rossiyskaya Gazeta*, March 30, 2009.
5. On this issue see in details: Brinchuk M.M., *supra* note 2.
6. Gazette (Vedomosti) of the Supreme Soviet of RF. 1992. № 32. Art. 1861. Moreover in Russia there is a law of a general nature in this area – the Federal law of December 21, 1994 № 68-FL “On protection of the population and territories from natural and technogenic emergencies,” Collection of legislation of the Russian Federation. 1994. № 35. Art. 3648. Ecological law doctrine justified a position on the need for the special federal law “On environmental disaster areas.” The necessity of its adoption was understood and supported by the State.





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the subject of legislation and law we understand this to be the totality of social relations regarding the environment (nature) that are regulated by law.

One of the common approaches in the doctrine of Russian ecological law is the concept of environmental legislation in the narrow and broad sense. In the narrow sense, it is represented as a system of legislative and other normative legal acts containing legal norms regulating relations only in the sphere of environmental protection. Environmental legislation in the broad sense is a system of legislative and other normative legal acts in the sphere of environmental protection, containing legal rules that regulate public relations on environmental protection and rational use of natural resources, ensuring environmental safety.⁷

Criterion of difference in the narrow and broad senses of ecological legislation is the subject of legal regulation. In one case, the subject of ecological law includes only relations on protection of the environment, in another – the totality of relations regulated by ecological law rules.

It seems that the same issues appear in Western European legislation. This is proved by the fact, for example, that the Umwelt Code draft in Germany, having the name of an act of general nature and intended to be universal, provides the regulation of relations only on environmental protection without reference to natural resources usage.⁸ At the same time, Environmental Code of Sweden regulates both relations in the sphere of environmental protection and certain natural resources usage.⁹

The question about the subject of legislation is one of the most significant for characterization of ecological legislation and law. As we have seen there are different opinions regarding the subject of ecological law in the Russian legal doctrine.

My position is the following. The subject of modern Russian ecological legislation includes public relations:

- on the right of ownership of natural objects (resources);
- on natural resources use;
- in the field of environmental protection from harmful chemical, physical and biological impacts, and
- on protection of environmental rights and legitimate interests of physical and legal persons.

7. Golichenkov, *supra* note 1. Although Prof. A.K. Golichenkov here mainly talks about the structure of ecological legislation, he is also talking about its subject.

8. See: Vinter G., "Environmental Code – Review and Assessment," *Ecological law*, Vol. 6, 2010, pp. 33–36.

9. See: <http://www.regeringen.se/content/1/c6/02/05/49/6736cf92.pdf>, accessed February 10, 2012.





Such an approach to the subject of ecological law ensures an integrated approach to legal regulation of crucial relations concerning the nature (environment) in regulation of which society is interested. Such approach to the subject's issues is one of the essential conditions of ecological legislation efficiency. The subject of ecological legislation, as well as the specificity of numerous environmental objects, impartially determines the specificity of legal regulation of these relations.

5. Integrated and Differentiated Approaches to the Development of Ecological Legislation

Each of the numerous objects of ecological relations has its own specificity, which determines the specificity of legal regulation of these relations concerning each of them.

Depending on the object in ecological legislation and law, integrated and differentiated approaches to legal regulation of public ecological relations are provided. An integrated approach is realized through the regulation of relations concerning nature (environment) as a single object in which all is interconnected. A differentiated approach is applied to all other objects of ecological relations – objects of nature and natural complexes. The peculiarity of the differentiated approach is in the fact that in the course of its realization all ecosystem connections of the object must be considered and taken into account.

Singling out such approaches in the law and their consecutive implementation has a sound methodological and practical significance. As Bronus Sudavichus rightly writes

“the determination of requirements relating to the whole environment as a complex integrated object of use and protection, and its reflection in law has primary significance, because its observance is designed to ensure preservation of the environment as a whole unity. This purpose is achieved as well by following requirements, the sources of which are individual natural objects and their characteristics. But this goal can be achieved indirectly through preservation of individual natural resources.”¹⁰

Within the framework of an integrated approach a regulatory mechanism is formed. It is based on the principle of ecosystem nature use and environmental protection regulation, which extends to protection and use of individual natural objects. This fact imposes on legislature not only the necessity to ensure priority-oriented adoption of laws on the environment, but also a particular responsibility for the establishment of an adequate, effective legal mechanism. For this purpose, laws on the environment must adequately regulate all ecological law institutions.

10. See: Sudavichus B.B., Problems of integrating environmental requirements into law. Thesis of a Ph.D. dissertation. Moscow: Institute of State and Law, 1988, at p. 9.





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A differentiated approach in regulation of relations regarding individual nature objects and complexes is developed and implemented on the basis and accountability of general principles of environmental law, implementing these or other means with regard to the specificity of each of the objects. This, in turn, determines the specificity of relations themselves, and the specificity of their legal regulation.

6. The Federal Structure of Ecological Legislation

The question of Russian environmental legislation structure is closely connected with its federal organization. In this context the question of the appropriate development of ecological legislation at national and regional levels is topical. There are two main challenges that are important in that regard: a) the definition of environmentally significant areas that should be regulated at the federal level, be in joint competence of the Federation and regions, and be governed only by regions; and b) rules of development of regional legislation in its relationship with federal one.

Rules of formation of ecological legislation in the context of its federal structure are defined in the Constitution of the Russian Federation.

The Constitution of the Russian Federation adequately identifies subjects of reference (jurisdiction) of the Russian Federation (Article 71) and of joint competence of the Russian Federation and constituent entities of the Russian Federation (Article 72). Thus, competence of the Russian Federation comprises of:

- regulation and protection of environmental human rights;
- Federal State ownership and management of natural objects;
- establishment of the foundations of federal environmental policy and federal programmes in the sphere of environmental development of the Russian Federation;
- nuclear power, fissile materials;
- production of poisonous substances, narcotics and an order of its use;
- determination of the status and protection of the territorial sea, the airspace, the Exclusive Economic Zone and the continental shelf of the Russian Federation.

To the matters of joint competence of the Russian Federation and the constituent entities of the Federation, the Constitution (Article 72) includes, in particular: use of natural resources, protection of the environment and provision for ecological safety; carrying out measures against catastrophes, natural disasters, epidemics, and rectification of their consequences; land, water, forest, subsurface and on environmental protection legislation.





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In accordance with Article 76 of the Constitution of the Russian Federation, outside the limits of authority of the Russian Federation and of the joint jurisdiction of the Russian Federation and constituent entities of the Russian Federation, constituent entities exercise their own legal regulation, including the adoption of laws and other normative acts. This article fixes another fundamentally important rule: laws and other normative legal acts of the constituent entities of the Russian Federation, adopted on the matters of joint competence, cannot be contrary to federal laws. In case of a conflict between a federal law and other act issued in the Russian Federation, the federal law is applied. This rule serves to ensure a uniform legal regulation of social relations in the Russian Federation and law enforcement provision in the country.

If there is a contradiction between a federal law and a normative act of a constituent entity of the Russian Federation adopted in the sphere of own legal regulation, the act of a constituent entity is applied.

Having the constitutional right to create ecological legislation, the task of a constituent entity of the Russian Federation is to reflect in its laws interests and needs in protection of nature and natural resources use, taking into account regional environmental, social, economic and other peculiarities.

Regarding the rule on correspondence of legislation of constituent entities to federal legislation, the question arises to what extent federal ecological legislation responds to interests of constituent entities of the Russian Federation.

Can constituent entities of the Federation influence the adoption of federal legislation?

The federal legislation provides a number of forms of participation of constituent entities in federal lawmaking: a) formulation by representative and executive bodies of constituent entities proposals for federal laws drafts; b) through their deputies in the State Duma; c) through their representatives in the Federation Council.¹¹ Thus, constituent entities of the Russian Federation have the real and legal right to participate in the preparation and adoption of federal laws. When

11. See: The Constitution of the Russian Federation (Art. 95); the Federal Law of October 6, 1999, № 184-FL (ed. from 30.11.2011) "On the general principles of organization of legislative (representative) and executive bodies of State power of constituent entities of the Russian Federation" (Art. 26.4.), Collection of legislation of the Russian Federation, 1999. № 42. Art. 5005. The Federal Assembly is a parliament of the Russian Federation; the representative and legislative body consists of two chambers: the Federation Council and the State Duma. The Federation Council includes two representatives from each constituent entity of the Russian Federation: one from the legislative and one from the executive State body. The State Duma consists of 450 deputies elected for a term of five years.





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adopted laws may not meet all interests of all constituent entities of the Russian Federation is another matter.¹²

Since ecological legislation is the subject of joint competence of the Federation and constituent entities, the question of priority ranking and the order of its formation is essential. Basic principles of legal regulation of ecological relations, which, in particular, form a basis for regional legislation – are supposed to be fixed in federal legislation. As a result, federal legislation should develop faster.

7. Conclusion

Thus, ecological legislation is a system of laws and other normative legal acts regulating public relations regarding nature, which form the subject of ecological law. Objects of public relations in ecological legislation are nature (the environment), natural objects and natural complexes named in the legislation. Ecological legislation of the Russian Federation includes laws and other normative legal acts adopted at the federal level and the level of the constituent entities of the Russian Federation.

These findings are of direct relevance to the Arctic. Ecological legislation of the Russian Federation is to regulate public relations that make up the subject of this legislation, mainly relations concerning the use of natural resources and nature protection. Applied to the Arctic zone, named in federal legislation as a separate, individual object of these relations, such relations must be regulated taking into account specific natural conditions of the Arctic. These specifics, especially, should be taken into account and reflected in the ecological legislation of the constituent entities of the Russian Federation located in the Arctic.

12. See, for example: Decree of the Constitutional Court of the Russian Federation of January 9, 1998 “On the case about the verification of constitutionality of the Forest code of the Russian Federation, associated with an inquiry of the administration of the Khabarovsk Kraiy and of the Government of the Republic of Karelia on the verification of constitutionality of the Forest Code of the Russian Federation,” Collection of legislation of the Russian Federation. 1998. № 3. Art. 429.





Понятие и структура системы экологического законодательства Российской Федерации

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Резюме

В статье исследуются понятие и структура экологического законодательства Российской Федерации. Важность исследования этих вопросов автор рассматривает с точки зрения обеспечения баланса и гармонии в развитии правового регулирования экологических отношений. Выделяются объекты этих отношений – природа (окружающая среда) и ее отдельные компоненты – природные объекты и комплексы. Исследуется предмет экологического законодательства – совокупность общественных отношений по поводу природы (окружающей среды), которые регулируются в законе. В зависимости от объекта регулируемых отношений, автор выделяет два подхода к формированию экологического законодательства – интегрированный и дифференцированный. В контексте федеральной структуры России исследуются правила разработки экологического законодательства на федеральном и региональном уровнях.

